

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

In Re)	
)	
STANLEY R. RUSSELL, JR.)	Case No. 01-60734
)	
Debtor.)	
<hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>		
)	
ERIN RUSSELL,)	
)	
Plaintiff,)	
)	
vs.)	Adversary No. 01-6044
)	
STANLEY R. RUSSELL, JR.)	
)	
Defendant.)	

OPINION

This matter having come before the Court on a Complaint to Determine Dischargeability of Debts; the Court, having heard sworn testimony and arguments of counsel and being otherwise fully advised in the premises, makes the following findings of facts and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The material facts in this matter are not in serious dispute and are, in pertinent part, as follows:

1. The Plaintiff in this adversary proceeding, Erin Russell, was divorced from the Debtor/Defendant on June 6, 2000, in Effingham County, Illinois, in Case No. 99-D-172.
2. As a part of the dissolution of marriage between the parties, Judgment of Dissolution and

Marital Settlement Agreement was entered under which the Debtor/Defendant was to assume and hold the Plaintiff harmless on a debt to Nation's Bank Visa, which, at the time of their divorce, was in the approximate amount of \$5,000.

3. The Debtor/Defendant filed for relief under Chapter 7 of the Bankruptcy Code scheduling as one of his debts the obligation to Nation's Bank Visa.

4. The Plaintiff, Erin Russell, filed the instant adversary proceeding on October 23, 2001, requesting that the Court find the debt to Nation's Bank Visa to be non-dischargeable in the Debtor's bankruptcy pursuant to 11 U.S.C. §523(a)(15).

5. Trial in this matter was held on March 1, 2002, at which time both the Debtor/Defendant and the Plaintiff testified as to their incomes and expenses and their respective abilities to pay the debt in question.

Pursuant to 11 U.S.C. §523(a)(15):

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt . . .

(15) not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit unless -

(A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or

(B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former

spouse, or child of the debtor;

In order to prevail under §523(a)(15), the Plaintiff must establish that she has a claim against the Debtor, other than the type set forth in §523(a)(5), that was awarded by a Court in the course of a divorce proceeding or separation. In re Paneras, 195 B.R. 395 (Bankr. N.D. Ill.1996), citing In re Silvers, 187 B.R. 648 (Bankr. W.D. Mo. 1995). Once the Plaintiff demonstrates that the debt is not a type set forth in §523(a)(5), which has been conceded in this case, the burden shifts to the Debtor to show either (1) that he lacks the ability to pay the debt at issue, or (2) that the discharge would be more beneficial to the Debtor than detrimental to the Plaintiff. Paneras, supra, at 403; and In re Hill, 184 B.R. 750, at 754 (Bankr. N.D. Ill. 1995). The debt will remain dischargeable if paying the debt would reduce the Debtor's income below that necessary for the support of the Debtor and the Debtor's dependents. Hill, supra, at 754. Because this language mirrors the disposable income text found in 11 U.S.C. §1325(b)(2), most Courts utilize an analysis similar to that used in determining disposable income in Chapter 13 cases. See: In re Smither, 194 B.R. 102 (Bankr. W.D. Ky. 1996); In re Carroll, 187 B.R. 197 (Bankr. S.D. Ohio 1995); In re Phillips, 187 B.R. 363 (Bankr. M.D. Fla. 1995).

In the instant case, upon analyzing the income and expenses of both the Debtor and the Plaintiff, the Court finds that the Debtor does have a limited ability to pay the debt in question. Therefore, the Court proceeded to analyze the facts to determine whether the discharge would be more beneficial to the Debtor than detrimental to the Plaintiff. In so doing, the Court finds that, under the facts of the instant case, it is appropriate to require the Debtor/Defendant to pay one-half of the debt to Nation's Bank Visa, as the debt existed at the time the Debtor filed for relief under Chapter 7 of the Bankruptcy Code, with any charges on said account being made after that time the responsibility of the party making said charge. This decision

is based upon the Debtor's limited ability to make payments together with a balancing of the interests of the parties concerning the effect of discharge of this debt.

ENTERED: March 5, 2002.

/s/ Gerald D. Fines
United States Bankruptcy Judge